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25 IN THE UNITED STATES BANKRUPTCY COURT
26 EASTERN DISTRICT OF CALIFORNIA
27 FRESNO DIVISION

28 In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry Street
Tulare, CA 93274

CASE NO. 17-13797

DC No.: WW-1

Chapter 9

Date: October 12, 2017
Time: 10:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

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REPLY TO OPPOSITION TO APPLICATION TO SHORTEN TIME ON CONTRACT
REJECTION MOTION
(HEALTHCARE CONGLOMERATE ASSOCIATES, LLC)

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1 TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY
2 JUDGE:

3 The mere fact HCCA so strenuously fights rejection of the Contract screams to
4 the Court that the Contract is unfavorable to the District.

5 In essence, by the rejection Motion the District declares that in its business
6 judgment the Contract is unfavorable to the District. The daily fee of at least \$25,000
7 plus the 30% premium on all payroll compensation which equates to approximately
8 \$720,000 a month¹ justifies early rejection.

9 This, coupled with HCCA's repeated statements that the District is "out of
10 money", that employees "will not be paid" on October 11, that employees "will be
11 furloughed" as of October 11 and that the hospital "may shut down" justifies having a
12 hearing on extremely short notice. The District is prepared to accept the consequences
13 of rejection and has standby plans for financing and to keep the hospital open. Until the
14 Contract is rejected, alternative managers will not come forward and HCCA has
15 threatened lawsuits against those who might be interested. However, without immediate
16 retention of a new manager, the District will be unable to keep the hospital open, which
17 will result in significant harm to the public's health and safety. Furthermore, the closure
18 of the hospital on such short notice will be in violation of various Health & Safety Code
19 regulations and will result in significant consequences to the District.

20 The HCCA criticisms of the abrupt filing of this Chapter 9 case will be addressed
21 at a later date, but suffice it to say that the gross unfairness of the HCCA Contract has
22 been the subject of intense discussion in the community since 2014, but a new board
23 was only very recently elected and even then HCCA thwarted the will of the people by
24 refusing to recognize the election of Senovia Gutierrez for several months until the
25 District Attorney weighed in.

26
27 ¹ Under Section 6 of the Management Services Agreement, HCCA is paid \$235,000 **monthly** as a
28 management fee, the amount of which increases each year. Under section 4(b)(ix) of the MSA, HCCA
gets a 30% premium on payroll. HCCA has indicated that the amount of payroll for 2 weeks is
\$1,200,000, which would equate to \$360,000 each payroll period or \$720,000 per month. Therefore, the
District is paying HCCA approximately \$955,000 each month to "manage" the hospital or approximately
\$31,000 a day.

1 The Court should also be mindful that HCCA has complete control over the
2 District's operations and finances and it refuses to provide the elected representatives
3 of a public entity with information they are entitled to receive including: Where is the
4 District's money? Who are the District's creditors? What is owed by the District? What
5 is owed to the District?

6 It is easy to criticize the District for not giving notice to its creditors when HCCA
7 will not provide this information to the District.

8 For HCCA to gratuitously say it will continue operations if the District puts up the
9 money, yet it will not tell the District anything about its finances tells the Court all it
10 needs to know and why the emergency hearing should not be postponed.

11 In the opinion and business judgment of the District, the unfavorable Contract
12 must be immediately rejected as provided by Sections 901 and 365.

13 In the event the Court gives any shrift to the Opposition and considers continuing
14 the hearing, *which has already been noticed to the known creditors*, such continuance
15 should be conditioned on immediately providing the financial information to the District
16 to which it is entitled and which has been requested and on a sequestration of all funds
17 coming to the District. The District is very concerned that a large influx of funds is soon
18 to be received and that the thrust of the Opposition is for HCCA to buy time so it grabs
19 and spends those funds, including reimbursement to itself, HCCA, for purportedly
20 advanced fees and expenses. It would be manifestly unfair for HCCA to keep the
21 District in the dark, stall the rejection and take the money and spend it.

22 In the view of the District, the Opposition is a stall tactic and the very health and
23 safety of patients, and livelihood of employees, is at risk so long as HCCA controls the
24 hospital.

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1 The District therefore prays that the Court deny the relief sought by HCCA and
2 that the hearing on October 12, 2017 at 10:30² a.m. go forward.

3 Respectfully submitted,

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5 Dated: October 11, 2017

WALTER WILHELM LAW GROUP,
a Professional Corporation

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7 By: Riley C. Walter
8 Riley C. Walter, Attorneys for Debtor,
9 Tulare Local Healthcare District
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² The District would not be opposed to a hearing in the afternoon in order to accommodate Mr. Levinson's travel plans.